

REMARKS

Applicants wish to express their thanks to the Examiner for taking the time for a telephone consultation with the applicants' representative. The present request for reconsideration will reflect that the consultation has been helpful, and should help facilitate the prosecution of this case.

The drawings are objected to as failing to comply with 37 C.F.R. 1.84(p) for several reasons.

First, certain reference signs are said to be missing from the drawings although mentioned in the description. Each of these reference signs is addressed as follows:

Reference line 4—4 is found on Fig. 1.

Reference line C—C is found in Fig. 4.

Reference character 36a is added to Fig. 2.

Reference character 80d is added to Fig. 3.

Reference character 10", was inadvertently cut-off from Fig. 6, but is now reinserted.

Reference character 50" is added to Fig. 6.

Secondly, the Examiner states that certain referenced characters (*i.e.*, 10, 46, 36, 96, 80c, 16, 18, 12, and 14) have been used to designate more than one element. Applicants have addressed objections regarding "46," "36," "80c," "16," and "18." Applicants respectfully request withdrawal of the Examiner's objection with respect to the remaining references. Each of these referenced numerals is used consistently with respect to the figures, and thus allows for a clearly identifiable reading of the disclosure. Applicants disagree that the suggested corrections to the drawings or to the specification will make reading of the disclosure any more clear or identifiable. Applicants submit that the corrections suggested is not mandated by the C.F.R. or M.P.E.P.

For example, reference numeral "10" does indeed refer to a disposable absorbent article as depicted in Fig. 1. However, the element identified in Fig. 1 is also a diaper and, alternatively, a garment, which are both particular types of disposable absorbent articles. The element is each of these. Thus, proper correlation exists between what is depicted and the use of that particular reference numeral. This is analogous to the use of the term "car" or "automobile" in a

specification. A car may also be referred to as a "motor vehicle" or a "powered vehicle." Any of these terms is acceptable and a Figure depicting a car would be depicting an automobile, a motor vehicle and a powered vehicle all at once.

The same is true with respect to reference numeral "12." Reference numeral "12" designates a first end region of the diaper which is more specifically a front waist region. Both descriptions are correct. Thus, the reference numeral applies to a uniquely identifiable element in the figure – an element that is both a first end region and a front waist region. This element of the diaper is clearly identifiable and no confusion exists as to the reading of the disclosure.

Applicants suggest that it is also important (and common) to make such connections between alternative terms for an element, e.g., first end region and front waist region, so as to further define the contemplated scope of the claims. Applicants further note that when alternative terms are mentioned, only one of the terms is used in the subsequent detail description. Applicants avoid alternating back and forth between alternate terms and, thus, avoid confusion.

The Examiner further objects to the drawings as outlined in pages 3-4 of the Detailed Action. These objections have been addressed accordingly by removing the reference character from the figures. A separate letter to the Official Draftsperson for proposed changes is also attached. In order to resolve any remaining issues concerning the drawings, Applicants' representative is available to discuss any such issues over the telephone with the Examiner.

Claims 1-72 are pending in the application. Claims 1-11, 14-18, 38, 46-47, 51-59, 61, 63-66, 68-69, and 71 are rejected under 35 U.S.C. 102(e) as being anticipated by *Turner et al.* (U.S. 6,135,988). Claims 12-13, 19-37, 39-45, 48-50, 60, 62, 67, 70, and 72 are rejected under 35 U.S.C. 103(a) as being unpatentable over *Turner et al.* (U.S. 6,135,988). Applicants respectfully traverse each of these rejections.

Applicants withdraw Claims 19-54 without prejudice. These claims are directed to one aspect of the invention that the applicants consider patentable subject matter. Applicants believe, however, that their telephone interview with the Examiner did not adequately address these claims. To facilitate prosecution of this case, Applicants elect to raise issues relevant to the patentability of these claims under a future continuation application.

Amended claim 1 recites a disposable absorbent article having, among other elements, a pair of end strips, each end strip being fixed intermediate the core and one of the end edges and extending between the side edges. The end strip includes at least three sections, each section being distinctly elastic and distinctly positioned relative to the other sections. A first section is recited as having generally elastic properties and laterally extending in generally parallel relation with the end edges. A second section is disposed longitudinally inward of the first section and extends in generally parallel relation therewith. The second section is further recited as being characterized in that the first section is substantially more elastic than the second section. A third section is also recited as being positioned longitudinally inward of said second section, said third section having an inward portion spaced away from said topsheet and said absorbent core.

Applicants respectfully maintain their position (as asserted in the previous Response) that limitations in claim 1 providing the relative positioning of the first, second, and third sections, and structural limitations concerning the elasticity of or relative elasticity of the first and second sections are not taught or suggested by *Turner* or any of the other cited references, individually or in some combination with *Turner*. The present amendment to claim 1 is submitted to further highlight these structural distinctions. Accordingly, the invention defined by claim 1 (even prior to the present amendment) is structurally different from any disclosure of the *Turner* reference; thus, it is not anticipated by the *Turner* reference.

Specifically, *Turner* does not teach or suggest the combination of three distinct (in regard to elasticity or relative position) sections as recited in claim 1. Whereas Applicants' claims clearly point out these limitations, *Turner* does not refer to or distinguish sections of the flap anywhere in the specification. As discussed in Applicants' specification, these characteristics of the end strip provide certain advantages and attributes not found in the cited references or in any of the prior art.

More specifically, *Turner* does not teach or suggest such a combination of three sections wherein a first elastic section has generally elastic properties, and wherein a second elastic section is substantially more elastic than the second section. *Turner* merely notes that the flap may include a layer of elastomeric material; it does not disclose the location of this layer on the flap. *Turner* also does not teach nor suggest how to integrate this elastic layer (or any elastic section for that matter) into the flap such that three distinctly elasticated and distinctly positioned sections are

defined thereon, as required by claim 1. *Turner* also does not suggest the relative elasticity between any two sections of the flap, with or without the elastic layer, as required by claim 1.

Applicants respectfully note that item 54 in FIGS. 1 and 5 are elastics strands and not apertures (See Col. 9, Ins. 54-59). These elastic strands are merely attached to the flap; they are not part of the flap nor provide a property of the material that forms the flap. In any event, the elastic strands cannot render any section less elastic in the manner suggested by the Examiner.

Further, *Turner* does not teach or suggest the position of the second section with respect to the first section and other parts of the disposable absorbent article, and does not teach or suggest the position of the third section with respect to the second and other parts of the disposable absorbent article, as required by claim 1. For example, *Turner* does not teach or suggest the combination of a first section specifically described as (having generally elastic properties) laterally extending in generally parallel relation with the end edges, and a second section (specifically characterized in that the first section is substantially more elastic than the second section) disposed longitudinally inward of the first section and extending in generally parallel relation therewith. Moreover, *Turner* does not teach or suggest a third section distinctly positioned relative to the second section (and thus relative to the first section) and the topsheet and absorbent core.

Applicants note further that the modifications to *Turner* which would be required in order to meet the limitations of claim 1 (i.e., creating three distinctly elastic and distinctly positioned sections of an end strip), do not advance any objective or purpose of the *Turner* absorbent article. In other words, there is no incentive, motivation, or suggestion to modify the *Turner* disposable absorbent article in the manner required by claim 1. Without such incentive, motivation or teaching, the *Turner* reference cannot provide the proper basis for a *prima facie* case of obviousness.

Accordingly, claim 1 and dependent claims 2-18 and 68-72 are patentable over the cited prior art, and are in condition for allowance.

Amended claim 54 recites a disposable absorbent article having, among other elements, end strips having features similar to those of the end strip of claim 1. For any one of the reasons set forth above with respect to claim 1, claim 54 is also patentable over the cited prior art.

Claim 54 also recites the disposable absorbent article as having a pair of side walls, each side wall having oppositely disposed end portions, wherein one of the side walls extends generally longitudinally between the core and one of the side edges and the other side wall extends generally longitudinally between the core and the other side edge. The disposable absorbent article also includes a containment pocket disposed generally in the crotch region, and bounded by a substantially continuous sidewall disposed about the core and adapted to retain exudates received in the pocket. Finally, an inward section of the end strip is secured to end portions of the side walls such that the side walls are biased generally upward, and the inward section and the side walls substantially form the continuous sidewall of the containment pocket.

Applicants submit that the *Turner* reference does not teach or suggest, among other things, an inward section being specifically attached to a pair of side walls such that the side walls are biased generally upwardly. As discussed in Applicants' specification, this provides an advantageous structural feature that is part of the Applicants unique contribution to the art. *Turner* also does not teach or suggest a substantially continuous sidewall or a containment pocket. In fact, it does not disclose any kind of detainment feature at the front waist edge of the diaper (40). Accordingly, claim 54, and each of dependent claims 55-60, contain additional patentable subject matter.

Independent claim 61 recites a disposable absorbent article having, among other elements, an end strip having three distinctly elastic and distinctly positioned sections. Thus, for reasons set forth above with respect to claim 1, claim 61 and dependent claims 62 –67 are also patentable over the cited prior art.

Claim 61 further recites a containment pocket disposed generally in the crotch region and bounded by a substantially continuous peripheral wall including a pair of side walls which are biased generally upward. Because none of the cited prior art teaches or suggests such a containment pocket or peripheral wall, Applicants submit that claim 61 contains additional patentable subject matter.

The subject matter recited in claims dependent from claims 1, 54, and 61 have been discussed in the previous Response. Applicants maintain their position that additional patentable

subject matter is contained in these claims, and hereby incorporates those arguments provided previously in support of this position.

In view of the above, each of the presently pending claims in this application is believed to be in immediate condition for allowance. Accordingly, the Examiner is respectfully requested to withdraw the outstanding rejection of the claims and to pass this application to issue.

If the appropriate Petition for an Extension of Time is not attached hereto (or any other Petition required of the application), this statement shall serve as Applicants' Petition to the U.S.P.T.O. Please charge any fees that are due for any Petition or any fee required of this filing to the deposit account of Fulbright & Jaworski L.L.P., Account No. 06-2375 under Order No. P01896US0 (10104297).

The undersigned is available for consultation at any time, if the Examiner believes such consultation may expedite the resolution of any issues.

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Respectfully submitted,

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